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**Remark:**

Claims 6, 7, 9-18, 40, 49 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spackova et al. in view of Aisaka et. Al. The examiner is respectfully requested to reconsider the merits of the subject application according to the arguments submitted herein:

**(A) New Supplemental Evidences:**

- (1) The office action indicated that the garment size indicators (5, 6, S, M, L) of standard commercial garment size charts teaches the concept of BP Code. The examiner is directed to note that the standard size indicators disclosed by Aisaka are standard garment size indicator set by standard organization such as JIS or EN. These garment size indicators are **specifically designed for indicating the size of garments, not for the size of human bodies**. The machine of Aisaka was also designed for measuring the size of a garment, not for measuring the size of a human body. Subject independent claim 40 is directed to the step by step procedure of producing the compressed BP Code of a human body, directly from the parametric measurements of the human body. The difference in fundamental nature between Aisaka and the subject invention proved that garment size chart should not be used for interpreting the step by step procedure to generate BP Code for human body.
- (2) The office action indicated that Aisaka disclosed standard garment size indicators 5, 6, S, M, L, each indicated the size of a garment **"and the bodies that wear them"**, so this size indicator can be interpreted as a compressed BP Code claimed herein. Page 30 last paragraph of the subject specification had already indicated that this interpretation is not true and itself is a problem to be addressed by the subject invention. The recitation of the specification indicated the problems of garment size charts are due to:
  - (a) a specific size (such as L size) of one country is different as compared with another country;
  - (b) body fitting size of an overcoat is different to the same size of an inner garment; and

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(c) garment fitting requirement (to fit with the human body) varies from style to style. Specification of the subject invention indicated that inconsistency of standard garment size indicators is a problem to be addressed by the subject invention. Aisaka also explicitly recited in col. 1, lines 14-18 that:

*When a wearer tries garments of one same kind and identically indicated sizes, he sometimes finds that some of them from one maker do not fit his physique in entirely the same way as others from another maker.*

This is an explicit acknowledgement from Aisaka that the standard garment size indicators mentioned in his disclosure may not be accurate.

(3) The office action was taking the position that since the size of a garment can be measured by the machine of Aisaka, then the human body size wearing the corresponding garment is measured by the machine of Aisaka. The applicant does not agree with this conclusion. Herein the applicant is challenging the examiner to take a clothing from his closet and asks a friend to measure the size of the clothing; then compare the measured size with the actual body size of the examiner. The examiner will be surprised how big the deviation between the two measurements to be. This is because the garment of a person normally won't fit tightly with the body of the user. The second challenge is to ask the examiner to take a first clothing from his closet for a first friend to measure the size; and then take a second clothing of different style and ask a second friend to measure the size. The applicant won't be surprised to see that the two measurements are very inconsistent and varied in many areas. These are strong evidences that the assumption of the office action is not correct.

(4) Close evaluation found that the machine of Aisaka actually failed to provide a complete parametric measurements needed to properly determine the size of an upper garment. This is because the machine of Aisaka failed to measure the length of the sleeve, which is essential for determining the size (S, M, L etc.) of the jacket 13 to be measured. Therefore Aisaka is "an incomplete" prior art for supporting the 35 U.S.C. 103(a) rejection of the subject claims.

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(5) Listed below is a typical chart of standard size indicators – EN 13402 is a system more comprehensive than the S, M, L system. The source is from the web site address: [http://en.wikipedia.org/wiki/EN\\_13402#Dress\\_sizes](http://en.wikipedia.org/wiki/EN_13402#Dress_sizes)

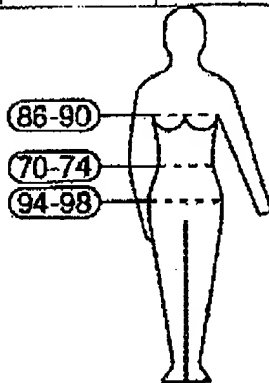
**EN 13402 is an European standard for labelling cloth sizes.**

#### **Women**

#### **Dress sizes**

The standard sizes and ranges for bust, waist and hip girth are:

<b>Bust girth</b>	76	80	84	88	92	96	100	104	110
<b>Range</b>	74-78	78-82	82-86	86-90	90-94	94-98	98-102	102-107	107-113
<b>Waist girth</b>	60	64	68	72	76	80	84	88	94
<b>Range</b>	58-62	62-66	66-70	70-74	74-78	78-82	82-86	86-91	91-97
<b>Hip girth</b>	84	88	92	96	100	104	108	112	117
<b>Range</b>	82-86	86-90	90-94	94-98	98-102	102-106	106-110	110-115	115-120



<b>Bust girth</b>	116	122	128	134	140	146	152
<b>Range</b>	113-119	119-125	125-131	131-137	137-143	143-149	149-155
<b>Waist girth</b>	100	106	112	118	124	130	136
<b>Range</b>	97-103	103-109	109-115	115-121	121-127	127-133	133-139
<b>Hip girth</b>	122	127	132	137	142	147	152
<b>Range</b>	120-125	125-130	130-135	135-140	140-145	145-150	150-155

By the time the subject application was filed, the same garment size indicators used in different countries had caused many confusing problems. EN 13402 was a garment size standard set by EU in 2007 (a date after the filing date of the subject application) trying to resolve this problem. It means the problem found by the applicant was acknowledged by the EN organization. From this size chart, it

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is obvious each garment size indicator is directed to "ranges" of parametric measurements. This is solid evidence that the fundamental nature of garment size chart is oriented from different "ranges" of parametric measurements, and not from the "exact measurements" of a human body, as recited in the subject claims. Variation of the fundamental theory behind proved that standard garment size chart is not a qualified prior art for supporting the compressed BP Code for representing true human body measurements as claimed. Teachings of garment size indicators that represent "ranges" of garment parametric measurements is therefore inappropriate to support the rejection of the compressing process of handling exact human body measurements.

- (6) Independent claim 40 is a process claim. In means merely the showing of S, M, L garment sizes in Aisaka or the multiple digits 76, 80, 84 of EN garment sizes is not adequate to support rejecting the process claim of claim 40. A product cannot be used to reject a process because they are different in nature. Alternately different patentable processes may well be able to produce the same looking product. Only a prior art process can be used as an evidence to support rejection of a claimed process. In order to faithfully compare with the claimed process, the examiner is respectfully requested to provide evidence showing the "process" how Aisaka generates the S, M, L codes or the "process" how the garment sizes 76, 80, 84 were generated by the EN organization when the organization designed the EN 13402 size chart. These evidences are required for fair comparison between the process of prior art and the corresponding property of the subject claimed process.
- (7) The examiner is directed to read the issued claims of U.S. Patent 7,194,327 which is a sister patent application of the subject case. Actually the key point of the current issue: the compression process to generate BP Code and the prior art Aisaka had both been addressed during the prosecution of the U.S. 7,194,327 patent. The professional examiner of U.S. 7,194,327 Patent was convinced that novelty issue of the compressed BP Code generation process claimed had been overcome. The examiner is sincerely requested to provide some respect to the professional opinion of the U.S. Patent 7,194,327 examiner.

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**(B) Traversing the office action dated 12/22/2009****(1) Rejection under 35 U.S.C. 101:**

Obviously the office action dated 12/22/2009 merely repeated the two requirements of the Supreme Court for overcoming the rejection under 35 U.S.C. 101 and ignored the substance of the argument submitted in applicant's response dated 10/30/2009. In that response the applicant had identified that in claim 40, the subject matter before transformation was the m parameters measured in unit length by step (2), the applicant further identified that the different state after transformation was the multiple digits compressed BP code generated by step (3). The office action had further been requested to consider all the three claimed steps "as a whole" to determine if it meets the requirement of 35 U.S.C. 101. Step (2) of claim 40 performs real world body measurements and therefore absolutely not an abstract step to be rejected by 35 U.S.C. 101. The latest office action never explained why this interpretation was wrong, or why it was inadequate to overcome the rejection under 35 U.S.C. 101. This is a violation of MPEP 707.07(f).

**(2) Requesting of cited prior art in lieu of the official notice that compression of body measurement data and sub-codes are obvious design choice:**

Previously the applicant quoted 37 C.F.R. 1.107(b) and precedent court ruling In re Sun requesting the office action to provide cited prior art or an affidavit in lieu of the prior art to support the official notice indicated. After providing several rounds of cited prior arts including Runton, then Powell, then Aisaka to support the subject ground of rejection, and after each of these cited prior arts were successfully traversed, the examiner elected to go back to the way of official notice. This time the office action declined to provide further cited prior art nor an affidavit under 37 C.F.R. 1.107(b) in lieu of a cited prior art. Upon repeated request, the office action further asked:

- (a) reason why the official notice is not well known in the art;
- (b) novelty, purpose and problems resolved by the invention.

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In fact the answers to these questions were either previously submitted to the examiner or had been clearly described in the specification of the subject application. The answers are resubmitted as follow:

- (a) The three supporting prior arts cited by the examiner; that were successfully traversed by the applicant were solid evidences that the official notice taken by the examiner is not well known workable knowledge for the subject application. This was due to the nature that compression technique available in other arts are seldom to be applicable for the special field of body dimensions compression and decompression. The specification had spent significant part of the specification, from pages 17-19 and 29-31 to explain the criteria and examples of enabling compression and decompression techniques suitable for this special field of application.
- (b) If the examiner had carefully read the specification, the detail answers requested by the examiner were already there. Novelty was the invention to generate a simple portable compressed code to represent detail full body measurement data of a human body. Purpose and problems solved was reducing return by on line garment shopping and for a user to have confidence in buying a fitted garment for a remote friend or relative as a gift.

Honestly, the applicant felt very annoyed and unfairly treated for the examination process to started from an official notice, then have three subsequent rounds of cited prior art to be successfully traversed; and then return to the same official notice; and now received another office action raising the above questions (a) and (b) to ask if a traversal and request of further prior art is justified? The applicant had spent 6 years of time and several rounds of RCEs into this cycle and eventually discovered that the office action has now returned and stuck at the original position of merely supported by an official notice.

**(3) Background of the declaration submitted on October 30, 2009:**

The declaration submitted by the applicant on 10/30/2009 comprised 9 points. Points 1, 8 and 9 are formality. Point 2 established the position of the applicant as a skilled artisan in the "field of TV engineering". Appendix A provides a typical waveform of a TV signal, a "technical starting point" from which the

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body measurements are to be derived, according to the interpretation of the office action. Point 3 recited the opinion from an established skilled artisan in the field of TV engineering, and the difficulty discovered by the applicant during his diligence of using TV signal to perform body measurement. (Note: if the examiner had carefully read the subject specification, workable embodiments were disclosed in Figures 4-6 and the corresponding description.) Point 4 provides further explanation of the unresolvable problems in the system of Spackova to perform body measurement from the signal of a TV camera. (Note: Spackova never indicated her system was designed to perform body measurement; it was the personal opinion of the examiner that it can be done). Herein the skill level of the applicant as established in Point 2, and the skilled artisan had determined that the set up of Spackova according to the irresolvable difficulties of Point 4, was unable to provide accurate body measurement. In Point 5 the applicant asked the examiner (assumed to be another skilled artisan in the art of TV engineering) to provide step by step description how the signal of Appendix A can be processed to provide accurate body measurements; and to provide evidence ascertaining the level of skill to conduct such measurements (from a TV signal). Point 6 declares unexpected result for overcoming ground of rejection under 35 U.S.C. 103(a), and that the unexpected result had been adequately recited in the subject application.

**(4) Response of the office action towards the declaration:**

In response to this declaration, the office action only provides response to Point 4. The office action indicated the following points:

- (a) The problem using TV signal to accurately measure body parameters due to limitation of frequency response of and frame rate was unsupported statement;
- (b) The unsupported statement, even if accurate, do not prove the invention of Spackova to be non-functional (to accurately measure body dimensions); more detail information along with supporting evidence for such conclusion would be required;
- (c) According to the examiner, one of ordinary skill in the art is taken to be a hypothetical person that works in the "field" (what field?) and that had both pieces of prior art available for consideration.

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**(5) Analyzing the response of the office action and supplemental arguments:**

According to the response of the office action, the following observations can be easily derived:

- (a) In view of section (B)(4)(a) herein, the examiner was found to be unfamiliar with the timing and waveform characteristic of typical TV signal, which is common knowledge to a person having ordinary skill in the art of TV engineering. Even the lowest grade TV technician should know that the standard of 480i NTSC TV signal has a frame resolution of 30Hz, 263 uninterlaced lines max per frame and a subcarrier frequency of 3.579MHz. Line resolution depends on quality of the TV camera sensor tube but this frequency is limited by the 1.25MHz luminous carrier frequency of TV standard. This common knowledge is essential to perform body measurements from the TV signals of Appendix A. Further limitations depend on the technical specification of the set up of Spackova which had not been disclosed. Without knowing all these fundamental knowledge is evidence that the examiner was **NOT** a skilled artisan in the field of TV engineering.
- (b) The present situation is that in Point 2, the applicant had established himself as a skilled artisan in the art of "TV engineering", and this skilled artisan had determined that he does **NOT** know how to make use of the system of Spackova to provide accurate human body measurements. The reasons were due to the difficulties outlined in Point 4 of the Declaration that had created a big gap for the TV signal of Appendix A to provide the final dimensional measurements of a human body. As a result, this skilled artisan asked the examiner, the second skill artisan to explain step by step procedure, starting from the TV signal of Spackova's TV camera, how accurate human body measurements can be performed, in order to proof that it can be done. According to the statement of (B)(4)(b), the office action declined to offer such explanation, but insisting that the first artisan should provide further evidences to convince the second artisan why the system in Spackova **cannot** provide such function. The office action erred in not applying the principle of common law in drawing such conclusion. Our law



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system is based on common law and the patent rules are therefore to be exercised under the common law principle. Under the common law principle, the prosecutor is required to proof that a defendant is guilty, rather than assuming the defendant is guilty and asks him/her to proof that he/she is not guilty. In this situation, the office action is required to demonstrate how "a skill artesian in the art of TV engineering" can start from the TV signal of Spackova, and under the difficult situations of Point 4 mentioned in the Declaration, to accurately measure human body dimensions. Without being able to establish level of skill of professional TV technician, explain how a typical TV signal can be transformed to provide accurate body measurements, and instead demanding explanation why TV signal cannot be transformed into measurements of human body dimensions is a violation of common law principle.

- (c) The examiner is respectfully requested to carefully revisit Point 5 of the declaration. The answer of section (B)(4)(c) is incomplete and also not commensurate to the question asked in Point 5 of the Declaration. Page 9, lines 9-11 of the office action dated 12/22/2009 failed to identify the field of the skilled artesian and the level of skill required to transform the TV signal of Spackova into accurate human body dimensional measurements. These are critical elements for the patent rules to determine validity of prior art interpretation. Applicant's interpretation of the patent rules is that the skillful artesian able to convert TV signal into human body measurements should be in the field of TV engineering and the level of skill should be skillful TV engineer level who knows how to make use of the TV specifications disclosed in section (5)(a) herein for estimating the resolution of picture information and design a transformation system and algorithm for converting the signal into dimensional parameters.
- (d) Because the technical interpretation of the office action seemed to be derived from a unskilled artesian not in the field of TV engineering and with a skill level lower than the level of a professional TV technician, and that the office action was unable to explain how a typical TV signal of Appendix A can be transformed into accurate human body measurements, this technical

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interpretation is obvious to be merely an personal opinion of the examiner that this can be done.

Listed below is the quotation of 37 C.F.R. 1.107(b):

*When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.*

Because an established skilled artesian in the art of "TV engineering" had already indicated in a declaration that the TV signal of Spackova cannot be transformed into human body measurements, the examiner is respectfully requested to provide an affidavit under 37 C.F.R. 1.107(b) explaining the step by step procedure, how the TV signal of Spackova can be transformed to provide accurate human body measurements for supporting the opinion of the office action.

**(C) Answer all material traversed:**

Listed below is a quotation of MPEP 707.07(f):

**707.07(f) Answer All Material Traversed[R-3]**

*In order to provide a complete application file history and to enhance the clarity of the prosecution history record, an examiner must provide clear explanations of all actions taken by the examiner during prosecution of an application.*

*Where the requirements are traversed, or suspension thereof requested, the examiner should make proper reference thereto in his or her action on the amendment.*

*Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it.*

One of the greatest difficulties for the applicant to provide proper responses was that the office action did not answer all materials traversed. The examiner is respectfully reminded to review any unanswered traverse substances submitted in previous responses, and provide an explanation why they are honored. **This is to document a repeated reminder that under the principle of law, in future review all**

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**unanswered traverses are considered to be explicit acknowledgement that the substance of the traverse was correct.**

According to the above supplemental evidences and substances of traverse, the grounds of rejection of the subject claims under 35 U.S.C. 103(a) are respectfully requested to be withdrawn. The previous examiner of U.S. Patent 7,194,327 has advised the applicant to alert the examiner of the subject application to confirm if double patenting will become an issue, depending on subsequent amendment of the independent claims. If subject independent claim 40 is determined to be allowable, the examiner is respectfully requested to determine if double patenting exists in between the allowable subject claim 40 and issued U.S. Patent 7,194,327. The examiner is also respectfully requested to provide opportunity for the withdrawn claims depending on claim 40 to be rejoined under the permission of the patent rules.

Respectfully submitted,

Peter Ar-Fu Lam

Applicant

**[End of Remark]**